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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,364	10/07/2003	Charles A. Miller	RWZ/78U	4643
26875 7590 06/10/2009 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER KUMAR, RAKESH				
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/680,364  
Filing Date: October 07, 2003  
Appellant(s): MILLER, CHARLES A.

Steven W. Benintendi

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 02/04/2009 appealing from the Office action mailed 10/16/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final rejection filed on 10/16/2008 has been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Sylvie (FR 2761342A1), Filed: February 10, 1997;  
Wood (US 4,558,816), Filed: September 27, 1984;  
Brintazzoli (US 5,348,219) Filled: September 14, 1993;

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3,6-11,14,15,17-29,32,33,35-39,43-4751,53-59,63,64-67,70,71,73,74 and 76-84 are rejected under 35 U.S.C. 102(b) as being anticipated by Sylvie (FR 2761342A1).

Claims 12,40,50,60 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie in view of Wood (US 4,558,816).

Claims 13 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie in view of Wood as applied to claim 12 above, and further in view of Brintazzoli (US 5,348,219).

Claims 16,34,42,52,62,68,69 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie.

**(10) Response to Argument**

In regards to applicants arguments pertaining to Claims 1-3,6-11,14,15,17-29,32,33,35-39,43-4751,53-59,63,64-67,70,71,73,74 and 76-84 as being rejected under 35 U.S.C. 102(b) as being anticipated by Sylvie (FR 2761342A1), the applicant recites "the Examiner has misconstrued the teachings of Sylvie to impermissibly reach the claims." Applicant further states "Sylvie is directed to an aspect that is far afield for what is recited in the independent claims," and "Sylvie is directed to the deconstruction of cartons into a relative flat configuration...this has nothing to do with a dispenser to facilitate the dispensing of articles carried by a carton or package."

In response to applicant's argument that "Sylvie is directed to an aspect that is far afield for what is recited in the independent claims," is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Sylvie disclose a process of marking a carton blank with perforated lines which when the carton blank is first assembled into a carton the perforated lines help to open or disassemble the carton in a orderly means. The applicants claimed invention also inherently refers to marking a carton blank with perforated line such that when the carton is fully assembled it can be selectively opened by the means of the perforated

lines disposed on the carton blank. Furthermore, Sylvie's carton blank as disclosed in Figure 10 and the applicants Figure 1 both indicate a carton comprising fold lines and perforated lines, therefore it is in the view of the Office that the cited reference of Sylvie is a relevant and analogous art as compared to the applicant's invention. Applicant argues because the cited reference of Sylvie emphasizes the deconstruction of the carton it far afield from what is recited by the claims. The applicant has overlooked the fact that prior to deconstruction of the carton as taught by Sylvie, the referenced carton blank firstly must be assembled into a carton or a package following the marking disposed on the blank. The carton of Sylvie prior to deconstruction teaches of major elements found in the applicant's claims limitations.

In response to applicant's argument that "this has nothing to do with a dispenser to facilitate the dispensing of articles carried by a carton or package", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this instant case the carton assembled as shown in Figure 11 (Sylvie) is capable of housing any number of articles even though the drawings do not show articles being removed from the carton, it is in no way to be construed that the carton structure as taught by Sylvie is not capable containing articles. Furthermore, the applicant has not distinguished how the structure of the Sylvie's carton is structurally different as claimed in the applicant's claimed limitations. It is thus understood the carton as shown is capable of containing articles prior to the cartons

complete deconstruction and as seen in Figure 6, partial removal of flaps would effectively enable the carton to dispense articles through the opening as seen in Figure 6.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/RAKESH KUMAR/

Examiner, Art Unit 3651

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651

Conferees:

Patrick Mackey /P. H. M./

Supervisory Patent Examiner, Art Unit 3653

Gene Crawford

Art Unit: 3651

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**Supervisory Patent Examiner, Art Unit 3651**